IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:05.04.2019
C O R A M
The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.34722 of 2006 &
M.P.No.1 of 2006

M/s.Angel Label Division
32, Parasakthi Koil Street,
Kongu Nagar, Tirupur-7. ...Petitioner

Vs

The Deputy Commercial Tax Officer,
Kongu Nagar Assessment Circle,
Tirupur. ...Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in TNGST No.2442062/99-2000, quash the order dated 28.02.2006 in as much as the same has been passed contrary to the clarification issued by the Special Commissioner and Commissioner of Commercial Taxes, Chennai u/s.28-A of he TNGST Act, 1959 in D.Dis Acts Cell-11/78749/2000 dt.13.02.2001 read with D.Dis Acts Cell-11/18967/2001 dt.18.05.2001 and D.Dis. Acts Cell-11/60434/2001 dt.29.10.2001 to the Narrow Woven Fabrics Manufacturers Association of India, of which the Petitioner is a member.

For Petitioner : Mr.B.Raveendran for
Mr.K.J.Chandran

For Respondent : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

This Writ Petition has been filed for a Writ of Certiorari to quash the Re- Assessment Order dated 28.02.2006 of the respondent herein.

2.The case of the Petitioner is that it is a registered dealer of the respondent and carries on business as a manufacturer of narrow woven fabric labels. According to the Petitioner, the said product comes within the scope of heading '58.06' of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (the Additional Duties of Excise Act). Therefore, the said product is exempted from sales tax under Entry 11 of Part A of the Third Schedule to the

Tamil Nadu General Sales Tax Act, 1959 (the TNGST Act), which reads as follows:

> "11.Narrow woven fabrics of silk, wool, cotton or man-made textile materials (produced or manufactured in India) as described in Column (3) against the heading '58.06' in column (1), of the First Schedule to the said Act."

3.The Petitioner further states that the Special Commissioner and Commissioner of Commercial Taxes, Chennai, issued a clarification D.Dis.ActCellII/17315/2000 dated 02.06.2000 whereby it was clarified that narrow woven fabric labels under Entry 11 of Part A of the Third Schedule to the TNGST Act are eligible for exemption. In addition to the aforesaid clarification, it appears that another clarification L.Dis.Acts CellII/78749/2000 dated 13.02.2001 was issued to the effect that narrow woven fabric falls under entry 11 in Part A of the Third Schedule to the TNGST Act and is eligible for exemption. Thereafter, in response to letter dated 09.03.2011 from the Narrow Woven Fabrics Manufacturers Association, of which the Petitioner is a member, requesting for a clarification under Section 28A of the TNGST Act, the Special Commissioner and Commissioner of Commercial Taxes (FAC), Chennai, clarified that the Clarification dated 13.02.2011 would be followed and that past settled cases would not be reopened and that pending cases would be decided as per Clarification dated 13.02.2011. A corrigendum/erratum dated 29.10.2001 was issued, subsequently, confirming that the clarification was in the context of narrow woven fabric labels and not narrow woven fabric.

4.In the above context, the Petitioner's returns for the Assessment Year 1999-2000 were assessed and by Assessment Order dated 25.06.2001, it was recorded that the total turnover of the Petitioner is Rs.2,26,64,354/- and that the taxable turnover is Nil because the dealer sold woven fabric and the said items are exempted from sales tax. The said Assessment Order records that the day book, ledger, purchase and sale bills were produced for assessment purposes.

5.Thereafter, it appears that a pre-revision notice dated 08.11.2004 was issued to the Petitioner stating that it is proposed to impose tax at 11% on the total turnover of Rs. 2,26,61,354 because the Petitioner had suppressed sales of woven labels and wantonly reported sales of narrow fabric. Consequently, it was stated that the tax liability, in this regard, would be Rs.24,92,748 with penalty thereon at 150%, for wilful suppression, amounting to an aggregate sum of Rs.37,39,122/-.

6.Based on the said pre-revision notice, a Re-assessment Order dated 28.02.2006 was issued whereby the tax liability at Rs.24,92,748/- and penalty at 150% thereon aggregating to Rs.37,39,122/- was confirmed. The said Re-assessment Order dated 28.02.2006 is the impugned order in this writ petition.

7. The case of the Respondent is that the exemption applies to narrow woven fabric, which is classified under heading 58.06 of the Additional Duties of Excise Act but not to woven labels, which are classifiable under heading 58.07 of the Central Excise Tariff Act, 1944, and entry 67, i.e. the residuary entry in Part D of the First Schedule to the TNGST Act, which is liable to be taxed at 11%. According to the Respondent, the product manufactured by the Petitioner is taxable under the said entry 67.

8.At the hearing, the learned counsel for the Petitioner pointed out that narrow woven fabrics are clearly exempted from tax as per Entry 11 of Part A of the III Schedule of the TNGST, as it was in the relevant assessment year, which reads as under:

> "11.Narrow woven fabrics of silk, wool cotton or man-made textile materials (produced or manufactured in India) as described in column (3), against the heading '58.06' in column (1), of the First Schedule to the said Act."

9.He further pointed out that this position was confirmed by a clarification issued in L.Dis.Acts Cell II/78749/2000 dated 13.02.2001 wherein it was stated as follows:

> 340.Narrow woven fabrics: Narrow woven fabric fall under Entry No.11 in Part-A of the Third Schedule to the TNGST Act, 1959, eligible for exemption.

10.He also referred to the invoices and delivery challans issued by the Petitioner in respect of the said narrow woven fabrics and pointed out as to how it is evident that the Petitioner was a dealer in narrow woven fabric in roll form. He further referred to the original Assessment Order and pointed that the assessing officer confirmed that these products are exempted from sales tax. He, thereafter, referred to the subsequent clarification dated 18.05.2001 and the erratum thereto dated 29.10.2001 whereby the Special Commissioner and Commissioner of Special Taxes (FAC), Chennai, clarified under Section 28A of the TNGST Act that the assessing officers would be instructed not to re-open settled cases and also follow clarification dated 13.02.2001 in pending cases.

11. In spite of the above clarification, which is binding on the assessing officer, the learned counsel contended that re-assessment proceedings were initiated entirely on the basis of audit objections. In this regard, he also referred to the counter of the respondent at paragraph-5 wherein it is stated, inter alia, as follows:

> "5. .... Subsequently, the Assessing Officer revised the assessment based on the objection of the audit wing that the woven fabric labels would fall under Entry 58.07 and therefore, not exempted from sales tax, under Entry 11 of Part A of the Third Schedule to the Tamil Nadu General Sales Tax, 1959...."

12.Accordingly, he submitted that the re-assessment proceedings and orders passed therein are in direct conflict with Entry 11 of Part A of the Third Schedule to the TNGST Act, 1959 and the binding clarifications issued in respect thereof.

13.In response, the learned counsel for the respondent submitted that the exemption is confined to narrow woven fabrics in roll form and not in label form. He further submitted that an alternative remedy is available against the re-assessment order, which was not exhausted before approaching this Court.

14.The affidavit, counter affidavit, documents on record and the oral submissions of both sides have been carefully considered.

15.On perusal of Entry 11 of the Part A of the Third Schedule of the Tamil Nadu General Sales Tax Act, it is clear that narrow woven fabrics of silk, wool, cotton or man-made textile materials (produced or manufactured in India) as described in column (3) against the heading '58.06' in column (1) of the First Schedule to the Additional Duties of Excise Act were exempted from sales tax.

16.This position is confirmed by clarification dated 13.02.2001. Significantly, the clarification dated 13.02.2001 expressly stated as follows:

> " The clarification already issued in this office reference D.Dis.Acts Cell II/65536/2000 dated 13.10.2000 and D.Dis.Acts cell II/76081/2000 dated 30.10.2000, treating the product as falling under Entry 67 in Part-D of the First Schedule to the TNGST Act, 1959, taxable at 11% is hereby cancelled."

Thereafter, by the subsequent clarification dated 18.05.2001 read with erratum dated 29.10.2001, it was also clarified that both settled cases and pending cases, in respect of narrow woven fabric labels, would be decided as per the clarification dated 13.02.2001. Therefore, the question arises as to whether the assessing officers are bound by the clarifications issued under Section 28A or whether they can deviate there from.

17.The above question is no longer res integra and was decided in several judgments. For instance, in Paper Products vs. Commissioner of Customs and Central Excise, 112 ELT 765 (SC), it was held that instructions/clarifications issued under Section 37B of the Central Excise Act, 1944, which is broadly similar to Section 28A of the TNGST Act, are binding on the assessing officer. Likewise, in State Bank of Travancore vs. CIT, (1986) 158 ITR 102, the Supreme Court held that circulars are binding on the tax authorities although not on the assessee. The said judgment was followed by a Division Bench of this Court in Mohan Breweries vs. CTO, 139 STC 4779 (the Mohan Breweries Case). In Lion Dates vs. Special Commissioner and Commissioner of Commercial Taxes, MANU/TN/2623/2014, this Court relied on various Supreme Court judgments and the Mohan Breweries Case to conclude that clarifications under Section 28A of the TNGST Act are binding on tax authorities and cannot be modified or cancelled retrospectively.

18.Although another Division Bench of this Court in Tvl. Pizzeria Fast Foods Restaurant (Madras) P. Ltd. vs. Commissioner of Commercial Taxes (2005) 192 ELT 52 (the Pizzeria Fast Foods Case) held that a clarification under Section 28A of the TNGST Act is not binding on the assessing officer who acts in a quasi-judicial capacity, the aforesaid and other binding decisions of the Supreme Court were not brought to the notice of the Court.

19.When the above binding decisions are analysed, it is clear that clarifications issued under provisions of tax statutes, including Section 28A of the TNGST Act, are binding on assessing officers but the actual assessment order cannot be dictated through such clarifications. The decision in the Pizzeria Fast Foods Case is also capable of being reconciled on this basis.

20. In the instant case, it is evident that the re-assessment proceedings were initiated in disregard of the clarifications dated 13.02.2001 and 18.05.2001 read with the erratum thereto dated 29.10.2001. The text of clarification dated 13.02.2001 underscores the fact that earlier

clarifications classifying the product under Entry 67 in Part D of the First Schedule to the TNGST Act were expressly cancelled whereas the assessing officer does precisely the converse. It is further evident that this was done largely on the basis of audit objections. Needless to say, for subsequent assessment years, it is always open to the tax authorities to cancel or modify earlier clarifications. However, as regards the assessment for the Assessment Year 1999-2000, the clarifications are binding and, consequently, the impugned re-assessment order is vitiated. Moreover, the imposition of a penalty of 150% purportedly under Section 12(3)(b) of the TNGST Act, in this factual and legal context, is untenable. In addition, the invoices and delivery challans that were filed at pages 8 to 11 of the typed set of papers of the Petitioner indicate that the Petitioner was dealing in narrow woven fabric in roll form but no definitive inferences are necessary or drawn in this regard. Accordingly, the Re-assessment Order dated 28.02.2006 contains errors apparent on the face of the record. Ordinarily, this Court would not exercise jurisdiction where an alternative remedy is available. Nevertheless, as held in Dhampur Sugar Mills Ltd. vs. State of UP (2007) 8 SCC 338, whenever the alternative remedy is not equally efficacious for any reason, this Court may exercise plenary jurisdiction. It is also relevant to state, in this regard, that the Writ Petition was admitted on 22.09.2006 and an interim order is in force.

21. Accordingly, this writ petition is allowed and the impugned order dated 28.02.2006 passed by the respondent is set aside. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commercial Tax Officer,
Kongu Nagar Assessment Circle,
Tirupur.

2.The Special Commissioner,
Commissioner of Commercial Taxes,
Chennai.

+1cc to Special Government Pleader sr.34211

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M.P.No.1 of 2006

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